

FILED

07 NOV 16 AM 9:52

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GEARHART, Richard W.
Defendant,

Mag. Case Number: _____

07 MJ 2680 DEPUTY


COMPLAINT FOR VIOLATION OF

Title 21, U.S.C., Sections 952 and 960
Importation of a Controlled Substance

The undersigned complaint being duly sworn states:

On or about November 15, 2007, within the Southern District of California, Richard Gearhart, did knowingly and intentionally import approximately 37.25 kilograms of marijuana, a schedule I narcotic into the United States from a place outside thereof; in violation of Title 21, United States Code, Sections 952 and 960.

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.


SIGNATURE OF COMPLAINANT
SPECIAL AGENT
U.S. IMMIGRATION & CUSTOMS
ENFORCEMENT

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 16th DAY OF
November 2007.


MAGISTRATE JUDGE

**Summary of Defendant's Post-Arrest Statement
United States vs. Richard W. GEARHART**

At approximately 11:00A.M. on 11/15/07, at the San Ysidro POE, CBP Officer E. Ongsioco was conducting pre-primary roving operations on primary lane # 9 when he inspected a maroon colored 1996 Ford Windstar bearing California license plate 3RMR561. In response to Officer Ongsioco's questions the driver and sole occupant of the vehicle identified himself as Richard GEARHART by presenting a California Driver's license, stating he was a U.S. citizen, and he was not bringing anything from Mexico. Additionally GEARHART stated he had bought the minivan one month ago at an auction in Otay Mesa, had been to Tijuana for some dental work, and worked as a stocker/clerk at a VONS supermarket in Vista, CA. GEARHART also provided registration documents to Officer Ongsioco that identified him as the registered owner of the minivan. Officer Ongsioco noticed GEARHART was avoiding eye contact, his hands were shaking and he had dry lips and mouth. Officer Ongsico inspected the minivan and observed green blocked shaped package concealed inside the driver's side panel of the mini van.

CBP Canine Enforcement Officer M. Villalobos responded with his narcotics detector dog "Nero" to examine the minivan (CA/3RMR561). "Nero" alerted to the odor of narcotics emanating from the rear of the van.

A search conducted in the secondary inspection area revealed numerous packages concealed in the minivan's driver's side panel area (16 packages), passenger side panel area (1 package), and dashboard area (7 packages). CBP Officer M. Valenteros probed one of the packages and it field-tested positive for marijuana. A total of 24 packages were removed from the vehicle, with a net weight of approximately 37.25 kg. (82.32 lbs.).

On 11/15/07, starting at approximately 1:30 P.M., ICE Special Agents Pamela Herrington and Joseph Dimeglio conducted a video-recorded interview, in English, of the defendant. GEARHART was Mirandized in the presence of said agents, waived his rights, and executed a written waiver that indicated that he agreed to answer questions without a lawyer present. During the interview, GEARHART was lucid and did not appear to be ill, intoxicated or under the influence the drugs. He was alert, responsive and capable of communicating in English. He did not appear to be unusually nervous or fearful. The defendant did not request or receive any bodily comforts during the interview and no promises or threats were made to elicit the statement. No breaks were taken during the interview and it ended at approximately 2:15 P.M.

A criminal history check of GEARHART revealed he has been arrested and convicted on multiple occasions in the State of California for drug and alcohol related offenses including in 1991 an arrest and convicted in the State of California for violation of H&S 11360 Transportation of marijuana for sale, a felony and two arrests and convictions in 2002 for H&S 11377(A) for drug possession, a felony.

cell

During the interview, defendant made the following statements:

GEARHART stated that he had met "Jack" LNU in September 2007 and again in October 2007 at which time he agreed to smuggle marijuana for "Jack". GEARHART stated he was currently homeless, had been without a steady job for six months, and was in desperate need of money. GEARHART stated he had been paid \$500.00 USD to transport two previous loads of marijuana in to the U.S. on or about November 9 & 13, 2007. Additionally, he was to be paid \$500.00 USD for delivering this load to the Burger King parking lot in San Ysidro, CA. GEARHART stated "Jack" would meet him at the Burger King, he would be paid by "Jack", then he would walk to his car and drive home to a friends apartment. GEARHART stated the minivan he was driving was registered in his name by "Jack" and actually belonged to "Jack."

Dated:



Special Agent
U.S. Immigration and Customs Enforcement